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The weight of authority is certainly against Pomeroy and these sporadic decisions, and in accord with the principal case.¹³ The law is correctly stated by Baldwin, J., in *Brett v. Cooney*:¹⁴ fraudulent representations constitute no ground for equitable relief unless made to one who was induced by them to act to his injury; but in measuring injury, equity does not concern itself merely with money losses. If it finds that a clear right has been invaded, it will seldom refuse its aid because the plaintiff can show no substantial damage to his pecuniary interests.¹⁵ And the party in the wrong should not be heard to say that no real injury can result from the fact misrepresented.¹⁶ Obviously, different questions will arise when it is sought to determine the measure of damages recoverable for such a fraud.

C. L. M.

WILLS—CHARITABLE BEQUESTS—PRECATORY WORDS.—In *Stinson's Estate* (No. 1)¹ the testatrix's will provided: "I give and bequeath" certain property, "to start and use for a Women's Christian Association. . . . I hereby appoint or wish the institution to be carried out upon the plan of the Women's Christian Association of Philadelphia. . . . I would like the executive committee to consist of the following ladies." One of the ladies named was a witness to the will. The Act of 1855² provides that wills containing charitable bequests must be "attested by two credible and at the time disinterested witnesses." The court held the bequest void because of the interest of the witness in question.

The case appears to raise two questions: first, should the precatory words, "I would like," be construed as a mandatory direction as to who shall compose the executive committee; and second, under such construction, is a person so named interested within the intent of the act. Mr. Justice Stewart, in his dissenting opinion, maintains that the words are a mere expression of advice or desire and supports this view with numerous cases.³ The authority of these cases is unquestioned and they have been followed in recent deci-

¹³ *Mather v. Barnes*, 146 Fed. 1000 (1906); *Williams v. Kerr*, 152 Pa. 560 (1893); *Hansen v. Allen*, 117 Wis. 61 (1903).

¹⁴ 75 Conn. 338 (1902).

¹⁵ *Wainscott v. Bld. & Loan Assn.*, 98 Cal. 253 (1893).

¹⁶ *MacLaren v. Cochran*, 46 N. W. 408 (Minn. 1890).

¹ 232 Pa. 218 (1911).

² Act of April 26, 1855, P. L. 332.

³ *Pennock's Estate*, 20 Pa. 268 (1853); *Janretch v. Proctor*, 48 Pa. 466 (1865); *Church v. Disbrow*, 52 Pa. 219 (1866); *Bowlby v. Thunder*, 105 Pa. 173 (1884); *Burt v. Herron*, 66 Pa. 400 (1870); *Hopkins v. Hunt*, 111 Pa. 287 (1885).

ions,⁴ but it is submitted that they are not conclusive upon the point in question. In *Burt v. Herron*,⁵ Sharswood, J., said: "Precatory words . . . will not in general convert a devisee . . . into a trustee," and in the same case he pointed out that there is no case where "words expressive of desire as to the direct disposition of the estate have not been held sufficient. . . . It is different where, having made a disposition, he (the testator) expresses a desire that the legatee or devisee should make a certain use of his bounty." In the principal case, the will itself creates the legatee; and it would seem that words describing that legatee, are of the substance of the disposition, and not a limitation on a disposition already completely made. The majority opinion held the direction mandatory.

On the question of the interest of a person thus appointed to the first executive committee, the court said: "In testing the qualification of witnesses to a deed or will by which a charity is created the situation is just the same as if the charity was in existence." This seems to follow from the words of the act, and has also been laid down in *Kessler's Estate*:⁶ "The interest which disqualifies a witness under the act is such an interest as appears to exist at the time of the execution of the will, either by the terms of the will itself, or by reason of the attesting witnesses being then interested⁷ in the religious or charitable institutions for which provision is made by the testator, or both, or either, as the case may be." Mr. Justice Stewart contended that the facts of the principal case did not bring it within this rule, and that the contingent quality of the interest took it out of the intent of the act. He said: "It is upon this ground that we have held that executors are not disqualified." It is submitted that a study of the cases on interest under the Act of 1855 will show that the contingent quality of the interest has in no case been the ruling ground for the decision. The case of *Snyder v. Bull*⁸ arose before the act, and the question was the proper proof of a will under the Act of 1833.⁹ An executor was a witness, and after giving the contingent quality of his interest as a ground for his competency, the court said: "But in contemplation of law an executorship is not an office of profit. In England the services are gratuitous and though they are paid for here the design of allowance is compensation. . . . Unlike a legatee, he is not the testa-

⁴ *In re Estate of Hugh Bellas*, 176 Pa. 122 (1896).

⁵ 66 Pa. 400 (1870).

⁶ 221 Pa. 314 (1908).

⁷ Employment by the institution as a servant is not such interest as is meant. *Coomb's & Hankinson's Appeal*, 105 Pa. 155 (1884). Cf. Words of auditing judge in *Kessler's Estate*, 221 Pa. 314 (1908): "It would seem that those who gather its assets, conserve and expend them, and upon whom the financial existence of the church depends, are such persons who, under the terms of the act, are interested."

⁸ 17 Pa. 54 (1851).

⁹ April 8, 1833, P. L. 249.

tor's beneficiary."¹⁰ In *Jordan's Estate*¹¹ the leading case on the same question since the act, these words are used: "But even in the event of his assumption of duties he can receive no more than compensation for the services which he may have rendered. . . . He could have no conceivable motive in unduly influencing the act of the testator, nor interest in the subject matter of the future controversy, and had therefore no legal interest." In *Jeane's Estate*,¹² the latest case on the question, where the witness was both executor and an officer of the company which was trustee of the gift for charitable uses, it was held, "The reasoning of our cases which hold that the compensation of an executor for his services does not disqualify him, applies with no less force to the services which may be rendered by the Pennsylvania Company in paying the dividends to the Children's Hospital." The court distinguishes *Kessler's Estate*¹³ on the ground that in that case, the witness in addition to being trustee and executor, was an officer of the church which was the beneficiary. It is submitted that it is the beneficial quality of the interest of a witness that brings it within the act; that its contingency has no rational bearing on the question, because, whether a man be executor, legatee, or officer of a charitable beneficiary under a will, the receipt of his bequest or the devolution of his duties thereunder, are subject to the same contingencies, *c. g.*, the will may be revoked; or he may die before the testator. If this interpretation of the cases be accepted, the decision of the principal case is in full accord with the existing law.

F. L. B.

WILLS—SECRET TRUST TO DEFEAT A MORTMAIN STATUTE.—The question, whether a secret trust attached to an alternative bequest, which, by the terms of a will, was to become effective in case the testatrix died within one calendar month, is discussed in the case of *Stirk's Estate*.¹

The facts of the case presented a very interesting problem. The testatrix in her will bequeathed her residuary estate to a charity. The scrivener, knowing that the testatrix was about to undergo a serious operation, prepared a codicil in which was contained an alternative bequest, in case of the death of the testatrix within one

¹⁰ For authority that the correct theory of the commissions of executors and trustees is compensation for work done, see *McCausland's Appeal*, 38 Pa. 466 (1861); *Montgomery's Appeal*, 86 Pa. 23 (1878); *Henson's Estate*, 217 Pa. 207 (1907).

¹¹ 161 Pa. 393 (1894).

¹² 228 Pa. 314 (1908).

¹³ 221 Pa. 314 (1908).

¹ 232 Pa. 98 (1911).